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No. 81-2138

In the Supreme Court of the United States

October Term, 1981

SARAH LINDA PARKER, et al.,
Petitioners,

v.

JUDITH K. ANDERSON, et al.,
Respondents

BRIEF OF RESPONDENT-PLAINTIFFS, JUDITH K. ANDERSON AND THE CLASS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Did the court of appeals properly affirm the trial court's exercise of discretion in approving a proposed class action settlement under the terms of which the trial court was obliged to, and did, make independent, objective awards of attorneys' fees which Petitioners never challenged as unreasonable in amount?

2. Did the court of appeals properly affirm the district court's exercise of discretion in approving as fair, reasonable and adequate a class action settlement which these Petitioners had authorized their attorneys to accept and which provides a $1,600,000 monetary benefit and substantial affirmative relief, after an adversary hearing at which the objectors to the settlement presented neither credible evidence nor legal authority concerning the strengths and weaknesses of the case or the possible range of recovery, and where the court determined that there was only a marginal chance of a $5,000,000 recovery if plaintiffs prevailed?

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INTRODUCTION

The trial court found that Petitioners authorized their attorneys to approve a proposed class action settlement if their individual exorbitant demands were also met and that they opposed the settlement in bad faith only after those demands were not met (B-21, 22).[1] After conducting an adversary hearing at which the Petitioners, who had more than four months to conduct discovery in support of their objections, presented

[1] "A- , B- and C- " references are to the designated page(s) of the Appendices to the Petition for Writ of Certiorari. "Tr. " references are to the designated page(s) of the transcript of the Settlement Hearing conducted on October 16, 17 and 18, 1980.

neither credible evidence nor legal authority concerning the strengths and weaknesses of the case or the possible range of recovery, the court found to be fair, reasonable and adequate a class action settlement which then provided a $1,370,000[2] monetary benefit and substantial affirmative relief which was estimated to cost the defendant employer $1,000,000 (B-14, 27). In contrast to this substantial benefit to the class, the court found that there was only a marginal chance of a $5,000,000 recovery if plaintiffs prevailed (B-20). The court found further that the settlement negotiations were at arm's-length between mature attorneys of the highest ethical caliber and that counsel behaved appropriately during and subsequent to the settlement negotiations (B-20, 30, 31, 32). Each of these findings was upheld by the court of appeals (A-8, 9, 11, 12, 13, 14, 16, 17).

Now, in an effort to persuade this Court to hear this case, Petitioners disregard virtually all of the trial court's findings, as affirmed by the court of appeals, misstate the facts, insult the trial court and defame the class attorneys. Incredibly, their Petition lacks even a single reference to the appended opinions of either court. Perhaps even more unjustifiable is the Petitioners' absence of candor concerning the facts. Rather than stating the facts found by the lower courts or attempting to demonstrate that the factual findings are erroneous, Petitioners pretend that their alleged version of events is the uncontroverted truth. The Court will recognize gross distortions at once upon reading the opinions of the respected district and circuit judges. Accordingly, it is unnecessary to respond to each of Petitioners' baseless factual misstatements.

It is impossible to accept the Petitioners' arguments without rejecting the entire record and the findings below. Furthermore, Petitioners' erroneous factual statements insinuate their

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[2]Pursuant to the terms of the settlement agreement, the defendant deposited $1,250,000 at interest for the benefit of the class in March, 1980. The settlement funds now approximate $1,600,000.

legal arguments and, consequently, render inapposite the few decisions upon which they rely. As no factual or legal basis exists for this Court's granting the requested writ, the Petition should be denied.

REASONS FOR DENYING THE WRIT

I. This Case Does Not Raise The Questions Presented By Petitioners Since Those Questions Are Premised Upon Unsupported Factual Allegations Which Have Been Rejected By The Lower Courts.

Petitioners' misperception of the appellate process has resulted in their making the same mistake before this Court that they did before the court of appeals. On appeal, they ignored the "clearly erroneous" rule and disregarded the trial court's findings. They continue to assert baseless factual contentions even though a unanimous court of appeals affirmed contrary findings on each of Petitioners' allegations. Those findings, once affirmed by the court of appeals, are not properly reviewable on a petition for writ of certiorari. *Rudolph v. United States*, 370 U.S. 269 (1962) (*per curiam*); *Comstock v. Group of Institutional Investors*, 335 U.S. 211 (1948); *Allen v. Trust Company*, 326 U.S. 630 (1946).

In a thinly-veiled effort to appeal to the adequacy of counsel issue which has been identified with the Chief Justice of the United States, Petitioners base their pleas on untrue allegations of wrongdoing by lead counsel. After a full and fair hearing, the trial court rejected each of Petitioners' contentions. Judge Mahon concluded that, "Negotiations were at arm's-length between mature attorneys of the highest ethical caliber . . ." and that there was "simply no rebuttal evidence of any weight to suggest that either attorney agreed to a settlement figure or settlement terms that were at variance with his *bona fide* professional judgment as to the strengths and weaknesses of his case, the expense of trial, and the likelihood of

protracted appeals" (B-20, ¶9). The district judge also found that "counsel consulted regularly and frequently with the class representatives throughout the case" and that the tentative settlement proposal was circulated for discussion with the named plaintiffs before the Stipulation of Compromise and Settlement was executed on March 28, 1980 and submitted to the court on April 18, 1980 (B-21, 22).[3]

Perhaps most significantly, the court also found that "all named plaintiffs consulted their attorneys about the class settlement and authorized them to convey binding settlement offers to defendant Bell and to approve the class settlement on their behalf if accepted" (B-21, ¶14). After a thorough review of the record, the court concluded that "lead counsel behaved appropriately in negotiating the tentative settlement as spokesman for the class, immediately advising the named plaintiffs and associate counsel of its terms by letter, and ascertaining the named plaintiffs' reaction to the settlement before presenting it to the Court by their Joint Motion for Preliminary Approval on April 18, 1980" (B-31-32, ¶11). Thereafter, the court of appeals considered these findings and stated, "We perceive no error in these findings" (A-13).

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[3]These findings, which contradict Petitioners' contention that they were unaware of the terms of the proposed settlement before agreement was reached, are supported by the record. The very day after lead counsel and Bell's counsel signed the February 29 letter which confirmed their mutual understanding of a tentative settlement proposal, Mr. Specter met with his clients and discussed the negotiations (Tr. 169, 276). Moreover, it was not Mr. Specter's function to meet with individual plaintiffs who were represented by other counsel. Accordingly, Mr. Mitchell, who represented most of the plaintiffs, contacted some of them to inform them of the tentative agreement on February 29 (Tr. 96, 114). He met with one of his clients on March 1 and showed her the letter which had been signed by lead counsel and Bell's counsel (Tr. 362). On March 9, Mr. Mitchell met with six of his clients and gave them each a copy of the February 29 letter (Tr. 94-95, 114-15). Petitioner Spears, who was represented by another lawyer, was informed of the status of the negotiations on March 3, 1980 (Tr. 315).

The court of appeals specifically addressed counsel's representation of the class also. The court considered Petitioners' contentions and held that, "The record does not support any of these assertions" (A-9). With respect to the contention that counsel did not consult with Petitioners in a meaningful way and that counsel failed to disclose some matters and misrepresented others, the court held that, "These allegations are contrary to factual findings by the trial judge and are not supported by the record" (A-12). The court reached similar conclusions with respect to Petitioners' contentions concerning disclosure (A-13) and alleged misrepresentation (A-13-14). Petitioners cannot rely upon contrary assertions as if this Court had no record before it.

Petitioners' contentions in their Statement of Facts are no more than figments of their imaginations and wishful thoughts. Just a few illustrations of the liberties which Petitioners have taken with the record and the findings below demonstrate the impossibility of relying upon their contentions in determining whether to grant a writ of certiorari. Petitioners respond to the court of appeals' statement that lead counsel gave "uncontroverted testimony" by arguing to this Court that, "Mr. Specter did not testify, nor was he sworn to testify, at the settlement hearing about anything except attorney's fees" (Petition, p. 18). What they fail to reveal to this Court, however, is the fact that their own counsel agreed at the Settlement Hearing that the entire pretrial record, including the deposition of Mr. Specter, was properly before the court for consideration in connection with the proposed settlement (Tr. 314).

Similarly, Petitioners cavalierly state that on April 18, 1980, "Mr. Specter also misrepresented to the district court that all of the representatives approved the agreement, despite Mr. Specter's obvious knowledge of their strong opposition just ten days before" (Petition, p. 6). In this unwarranted attack

upon counsel, they fail to acknowledge that the court of appeals specifically affirmed the trial court's conclusion that, "It would be a gross distortion of the events to suggest that counsel attempted to conceal or even delayed notifying the Court of the Plaintiff-Objectors' dissent once it became irreconcilable" (B-32). The court of appeals properly recognized that, "Obviously, the trial judge is in the best position to know whether he was or was not informed of the opposition" (A-13). In connection with this argument, one can only wonder why the Petitioners have not disclosed to this Court the fact that shortly after the March 26, 1980 meeting they converged *en masse* upon Judge Mahon and his staff to voice their objections personally, a fact which was brought home promptly to everyone involved in this case.

In another distortion of the record, Petitioners assert that it was not until after Mr. Specter had formally signed and approved the proposed settlement that the Petitioners learned "for the first time" that he had negotiated matters involving attorney's fees (Petition, p. 6). Here, they ignore not only the findings that there was no impropriety in any of counsel's conduct, but also their own sworn affidavits that at least six of them received a copy of the February 29 letter, the document which contained the fee language which they now question, on March 9, 1980, 19 days before the Stipulation of Compromise and Settlement was signed. See footnote 3, *supra*.

It is glaringly apparent that this Court cannot properly unravel Petitioners' factual misstatements as a basis for granting a writ of certiorari.

II. Not Only Is There No Conflict Among The Decisions Of The Courts Of Appeals Concerning The Propriety Of A Proposed Class Action Settlement Under The Terms Of Which The Trial Court Is Obliged To, And Does, Make Independent, Objective Awards of Attorneys' Fees To Be Awarded From A Settlement Fund, But Petitioners Have Misstated The Facts As Found By The Trial Court And Affirmed By The Court Of Appeals In Order To Create The Appearance Of A Conflict.

In order to appreciate the numerous fallacies which underlie Petitioners' argument concerning the propriety of negotiating a class action settlement which provides that the court may award fees from a settlement fund, it is important to recognize precisely what the record establishes was and was not negotiated. Paragraph 10 of the Stipulation of Compromise and Settlement provides that "all Plaintiffs' attorneys' fees, expenses and costs awarded by the Court shall be paid from the Settlement Fund" (A-15) and that Bell Helicopter would "have no further liability as to fees and costs than from the Settlement Fund except with respect to fees earned or costs incurred subsequent to the date of execution of this Stipulation in connection with the claims of the individual Plaintiffs" (A-15). As the trial judge stated and as counsel for Petitioners acknowledged in open court (Tr. 461-63), there was absolutely no negotiation of a single question concerning the amount of, or entitlement to, fees.

The only fee-related subject discussed by the negotiators was that any settlement, in whatever amount, would satisfy Bell Helicopter's liability for the class's claims and for whatever amounts, if any, the court might award to counsel (Specter depo., p. 58).[4] There was no agreement by Bell Helicopter to

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[4]"Specter depo., p. " references are to the designated page(s) of the transcript of deposition of Howard A. Specter taken by Petitioners on October 3, 1980.

pay any fee, to not oppose any fee or, indeed, to do anything else with respect to any possible fee (A-15; Specter depo., p. 58). At the outset of the negotiations, Bell Helicopter wanted and was entitled to know, as both parties had to know, what liabilities would be extinguished by any payment upon which they might agree (Specter depo., p. 57).

Judge Mahon responded to Petitioners' attack regarding this matter. At the Settlement Hearing, he stated:

> I want to make it clear that it is solely on the shoulders of the Court, period. I don't have to approve anybody's fees. The amount is left entirely to the Court. I can grant whatever I determine from the record and from the facts.
>
> What is before the Court at this time is that Bell has offered to settle the class action for X dollars, period, and plus numerous other acts, non-monetary acts that the class action is seeking. As far as whether the settlement is approved is strictly up to the Court, based on the evidence, based on what the Court finds.
>
> As far as what attorney fees will be awarded to any lawyer is solely on the shoulders of the Court, one hundred percent. There is no agreement between the attorneys and the litigants on what their fee is going to be or can be. It is strictly up to the Court. That is what the Supreme Court held. That is a rather awesome responsibility, but the Judge's responsibility in nearly every case is rather awesome and all we can do is follow the law, take the facts and apply the law. And that is what we are supposed to do anyway. If I approve it then I will have to set the fees. If I don't approve it, then of course, you will proceed from that standpoint as to the trial of the case. (Tr. 463-64).

Petitioners' reliance upon *Prandini v. National Tea Co.*, 557 F.2d 1015 (3d Cir. 1977), is misplaced. Petitioners assert

that the United States Court of Appeals for the Third Circuit was presented with a situation identical to the one here. In fact, the condemned vice in *Prandini* was the negotiation of a settlement agreement which provided for payment of one sum certain to the class and another, separate, sum certain to counsel. It was undisputed that two separate sums were negotiated simultaneously. The court properly recognized the conflict created by that situation. There, it was clear that in reality there was only one fund for both the class and the attorneys' fees and that class counsel, not the court, had made the allocation between counsel and the class. No such situation exists here, where there were no negotiations concerning entitlement to fees or the amount of any fees and where the district court conducted an open adversary hearing at which it shouldered the sole responsibility for determining fee entitlements.

Equally inapposite is *Mendoza v. United States*, 623 F.2d 1338 (9th Cir. 1980), *cert. denied*, 450 U.S. 912 (1981), the only other appellate decision upon which Petitioners rely. *Mendoza*, like *Prandini*, involved class counsel's simultaneous agreement upon one sum for the class and another sum for attorneys' fees. Nevertheless, the appellate court properly recognized that each case must be scrutinized and decided on its own peculiar facts in the exercise of the trial court's informed discretion. The court upheld approval of the settlement and reasoned as follows:

> Whether the existence of this potential conflict requires a trial court to reject a settlement proposal depends upon the circumstances of each case. The presence of simultaneously negotiated attorneys' fees should cause the court to examine with special scrutiny the benefits negotiated for the class. It would rarely be an abuse of discretion for a trial court to reject a settlement proposal where such combined negotiation took place. But rejection of a settlement is not automatically required in such cases—there may be circumstances present which appear to neutralize the potential for impro-

> priety. Such a judgment is appropriately within the sound discretion of the trial judge who can be sensitive to the dynamics of the situation. Thus, while we strongly discourage the simultaneous negotiation of attorneys' fees and substantive issues in class action settlement negotiations, *accord, Prandini*, 557 F.2d at 1021, we do not believe rejection of a resulting settlement in every case is appropriate. *Id.*, 628 F.2d at 1353.

In this case, where there was no simultaneous negotiation of a sum certain of attorneys' fees and where the trial court's findings of proper conduct on counsel's part were upheld by the court of appeals, *Mendoza* adds nothing to Petitioners' attack.

For reasons best known to them, Petitioners failed to cite *Piambino v. Bailey*, 610 F.2d 1306 (5th Cir.), *cert. denied*, 449 U.S. 1011 (1980), the only other appellate court decision to deal with this question. That opinion was called to the attention of Petitioners' counsel by lead counsel during the course of his deposition in this case and was distinguished by the court of appeals (A-16). *Piambino* is particularly relevant since it was decided by the same court of appeals which affirmed the settlement herein. In *Piambino*, the settlement agreement expressly provided for the payment of a specific amount of attorneys' fees out of the settlement fund. As the district court in *Piambino* pointed out in approving the settlement, it was "not being asked to set reasonable attorneys' fees in conjunction with the instant settlement; rather the court is being presented with a proposed settlement, agreed to by all parties and unopposed by the class, which incorporates an award of attorneys' fees in the amount of $750,000.00 as a vital part of the settlement." *Piambino, supra*, 610 F.2d at 1328. On that reasoning, held the court of appeals, "the district court abdicated its responsibility to assess the reasonableness of attorneys' fees proposed under a settlement of a class action, and its approval of the settlement must be reversed on this ground alone." *Id.* In the instant case, there were no such negotiations and the entire subject of attor-

neys' fees was left to the discretion of the court. The trial judge did not abdicate his duties and made it clear that he recognized his grave responsibility. He rubber-stamped none of the fee requests.

Clearly, under the circumstances here, where there was no negotiation of any sum for attorneys' fees, and where the settlement has withstood the test of reasonableness, approval and affirmance of approval of the settlement were appropriate. The district court, who observed counsel throughout the litigation, found that the settlement negotiations had been at "arm's-length between mature attorneys of the highest ethical caliber" and that the "objectors adduced no persuasive evidence to show fraud or collusion or to otherwise impeach [Mr. Specter's] evaluation of the settlement given the weaknesses of the case" (B-20, 30). These findings, which Petitioners disregard completely, were affirmed by the court of appeals (A-8, 12, 13, 16). There simply is no basis to suggest to this Court that a fair and reasonable settlement should be set aside because of theoretical conflicts. *Robertson v. National Basketball Association*, 389 F. Supp. 867, 899 (S.D.N.Y. 1975).

Petitioners have pointed to no case in which a settlement agreement of the kind approved by the district court was held to be improper. Not one of the cases which they cite deals with a situation even remotely similar to the one involved in this case.[5] It is not surprising that they do not in light of the long-standing American rule articulated by this Court in *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975). This Court recognized there that historically the fees of class action attorneys have been paid out of the fruits of their labors.

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[5]For example, Petitioners place reliance on *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479 (E.D. Pa. 1975). There, the court refused to approve a settlement under which the class was receiving no consideration and where the defendant had agreed to pay plaintiffs' counsel a fixed sum for attorneys' fees.

In arguing that the denial of certiorari somehow will engender abuse of the class action device, Petitioners misread the opinion of the court of appeals and rely upon ill-founded theoretical arguments. They assert that the court of appeals held that when applicable procedures for determining the reasonableness of attorneys' fees are followed, "any review of matters involving an attorney's conduct is limited to whether the trial court abused its discretion in determining the amount of the fee" (Petition, p. 8). They disregard the fact that the trial court specifically inquired into and made findings concerning counsel's conduct (B-20, 30). They further ignore the fact that the court of appeals reviewed and upheld these findings concerning counsel's conduct (A-11). Review was anything but limited. The detailed review which was conducted by the trial court and affirmed by the court of appeals more than answers Petitioners' concern for a "guarantee that a class attorney has ardently and conscientiously bargained for the most adequate compensation for the class" (Petition, p. 8). The suggestion that "one could never be sure that a class attorney later submitted a modest request for attorney's fees in order to avoid any examination of the earlier manner by which he had negotiated the settlement" (Petition, p. 9) is ludicrous in the context of this case. Petitioners' complaint is to the contrary. They have never suggested that a "modest request" for attorneys' fees was made.

Petitioners not only have failed to demonstrate the existence of any conflict among the decisions of the courts of appeals, they have also failed to cite a single authority which supports their contention. They create the appearance of precedent only by arguing factual contentions which were properly rejected below.

III. The Courts Below Did Not Apply An Improper Legal Standard.

The trial court made the following finding which was upheld by the court of appeals:

> Plaintiff-Objectors opposed the settlement in bad faith, primarily to gain leverage in settling their individual claims against Bell Helicopter at exorbitant figures. Although there were obvious differences of degree among Plaintiff-Objectors, their opposition to the settlement was a product of disappointment and greed, rather than dispassionate evaluation of the settlement against the risks and expense of pressing on with the litigation (B-22).

After attacking the trial court's integrity by asserting that it "chose to impugn the Petitioners' motives" (Petition, p. 21), Petitioners go on to assert that the trial and appellate courts somehow applied an erroneous legal standard in considering this factor at all. Even a cursory reading of the trial and appellate courts' opinions makes it clear that this finding was not the sole, or even a principal, reason for approving the proposed settlement. As the trial court pointed out, "Whatever the motives of the named plaintiff-objectors, their opposition to the settlement created an adversarial setting in which to weigh the legitimate interest of the objecting class. The objecting class was represented by an able attorney who was afforded the means to raise and adequately develop his position on the adequacy of a settlement negotiated prior to any determination of liability" (B-19, ¶6). If anything, the trial court welcomed the objectors' opposition, without regard to their motives, for that opposition resulted in a thorough record upon which to review the settlement. As the district judge stated, he "had the advantage of an organized and capably represented group of objectors who, if they did not succeed in impugning the settlement, at least left little reason to suspect material gaps in the record" (B-29, ¶7).

The trial court applied the legal standard which has been adopted and utilized by virtually every court which has had occasion to assess the fairness and reasonableness of class action settlements. As the court of appeals recognized, the trial judge articulated and considered the following factors in detail:

(1) whether the settlement was a product of fraud or collusion; (2) the complexity, expense and likely duration of litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the factual and legal obstacles to prevailing on the merits; (5) the possible range of recovery and the certainty of damages; and (6) the respective opinions of the participants, including class counsel, class representatives, and the absent class members (A-6, B-30).[6] These were proper standards to apply. *Pettway v. American Cast Iron Pipe Co.*, 576 F.2d 1157, 1214-19 (5th Cir. 1978), *cert. denied*, 439 U.S. 1115 (1979); *Shlensky v. Dorsey*, 574 F.2d 131 (3d Cir. 1978); *Flinn v. FMC Corp.*, 528 F.2d 1169 (4th Cir. 1975), *cert. denied*, 424 U.S. 967 (1976); *Grunin v. International House of Pancakes*, 513 F.2d 114 (8th Cir. 1975); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974).

The settlement was approved in light of the overwhelming evidence concerning its fairness and adequacy.[7] Because there

[6]The trial court considered seriously the fact that it received 242 objections, representing approximately 20% of that segment of the employee class still working at Respondent Bell's Fort Worth facilities on March 1, 1980. Petitioners place heavy reliance upon this factor, but fail to reveal that all but 12 of these objections, including those of former employees, were in the form of preprinted petitions which were circulated by Petitioners personally (B-23). They also fail to point out that only one class member from Amarillo and none of the 1,380 unhired applicants who filed claims filed objections. Only persons to whom Petitioners directed a misleading campaign against the settlement filed objections (*Id.*). The objections must be read in this context and were so treated by the trial court.

[7]The Petitioners were unable to adduce any facts in support of their broad-ranging charge that the class action settlement was insufficient. As the court of appeals indicated, Petitioners "offered no evidence at the settlement hearing" concerning the issues of probability of success or the range of recovery (A-8). Thus, Petitioners ignored the many risks faced by the plaintiff class, including the risk of eventual decertification of a class which included unhired applicants, employees, union and non-union personnel and personnel from Bell's facilities both in Fort Worth and in Amarillo. This Court's recent decision in *General Telephone Co. v. Falcon*, 50 U.S.L.W. 4638 (U.S. 1982), is clear evidence of the reality of the risks inherent in continuing this case through trial and appeal. Petitioners continue to ignore these and other substantial impediments to recovery.

were serious credibility issues to be resolved arising from Petitioners' unproven allegations concerning counsel, including the question of whether the Petitioners earlier had given their approval to the settlement, it was appropriate for the trial court to assess the Petitioners' motives in evaluating their credibility. Even if the Petitioners' motives, standing alone, could not be a basis for approving or disapproving the settlement, their motives impact heavily upon such questions as whether they had authorized their attorneys to accept the proposed settlement if their individual demands were met; whether they accurately portrayed their communications with counsel; whether they sought information concerning the settlement, as they contend, or whether they rejected such information when it was offered; and, indeed, whether their own representation of the class was fair and adequate. The trial court had the heavy responsibility of considering and resolving issues such as these. Based on the clear record, it resolved them against the Petitioners. That is their sole complaint.[8] That complaint does not merit this Court's exercising its discretionary power in this lawsuit. There is nothing important, novel or extraordinary in a party's complaining that the fact-finder disbelieved it.

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[8]Petitioners also contend that the court erroneously concluded that they were attempting to exercise leverage in opposing the settlement because, they say, they had no leverage to exercise. The record evidence is to the contrary, however. As all persons involved understood, the proposed settlement could not be finalized until it was adopted by the parties. Petitioner Jackson testified at the Settlement Hearing that it was her understanding that the class action could not be settled unless the individual claims were also settled (Tr. 7). Petitioner Haynes expressed the same belief (Tr. 241-42). Lead counsel similarly expressed his understanding in the letter introduced as Objectors' Ex. 2 at the Settlement Hearing. He stated therein: "Bell has offered to settle your individual claim for the sum of $1,500 *contingent upon adoption of the class settlement agreement by the parties* and approval of that settlement by the court." (Emphasis supplied.) It is apparent, therefore, that Petitioners believed they had substantial leverage.

CONCLUSION

Confronted with what the settlement proponents demonstrated and what the district court and court of appeals found to be a fair, reasonable and adequate settlement, the Petitioners make a vicious and unwarranted attack on the distinguished district court judge and on class counsel. As demonstrated by the lower courts and this brief, Petitioners premise their insulting arguments on matters which they never proved and which, in fact, were rejected as unsupported by the evidence. Petitioners' greed and bad faith opposition to a settlement which will benefit thousands of people should not be rewarded by this tribunal. The Petition should be denied so that the class members now will be able to avail themselves of the hard-fought relief to which they are entitled.

Respectfully submitted,

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